

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ROGER W. WHEELER,

Plaintiff,

vs.

ZIMMER, INC.,

Defendant.

**8:12CV253**

**AMENDED FINAL PROGRESSION  
ORDER**

Upon the parties' joint motion, (Filing No. 24), which is hereby granted,

IT IS ORDERED that an amended progression order is entered as follows:

A. Transfer and Inspection of Devices at Issue.

- 1) Plaintiff will transfer the devices at issue to Defendant by April 9, 2013 for Defendant's inspection and specific product identification.
- 2) Defendant will return the devices at issue to Plaintiff by April 30, 2013 - approximately 21 days after Defendant's initial receipt of the devices at issue from Plaintiff for Defendant's inspection and specific product identification.
- 3) Defendant will serve its responses (and objections) to Plaintiff's First Interrogatories and First Requests for Production of Documents (which were served February 28, 2013) by June 14, 2013 - approximately 65 days after transfer of the devices at issue to Defendant for specific product identification and inspection.
- 4) On or before August 4, 2013, Plaintiff will transfer the devices at issue to Defendant for inspection by Defendant's consultants and experts.
- 5) Defendant will transfer and return the devices at issue to Plaintiff by October 10, 2013.
- 6) All transfers and inspections of the devices at issue shall be conducted in accordance with the Stipulation Regarding Device Inspection entered into by the Parties and the Stipulation's accompanying Protocol for Shipping,

Handling, Inspection, and Cleaning of the Devices and Chain of Custody Form.

B. Amended Progression Order.

- 1) The jury trial of this case is set to commence before John M. Gerrard, United States District Judge, in Courtroom 1, United States Courthouse, Lincoln, Nebraska at 9:00 a.m. on **June 17, 2014**, or as soon thereafter as the case may be called, for a duration of seven (7) trial days. This case is subject to the prior trial of criminal cases and such other civil cases as may be scheduled for trial before this one. Jury selection will be held at commencement of trial.
- 2) The Pretrial Conference is scheduled to be held before the undersigned magistrate judge on **June 3, 2014 at 9:00 a.m.**, and will be conducted by WebEx conferencing. To facilitate this conferencing method, the parties' proposed Pretrial Conference Order and Exhibit List(s) must be emailed to [zwart@ned.uscourts.gov](mailto:zwart@ned.uscourts.gov), in either Word Perfect or Word format, by 5:00 p.m. on June 2, 2014. An email will be sent to counsel of record with the instructions and codes for participating in the pretrial conference by WebEx.
- 3) A telephonic conference with the undersigned magistrate judge will be held on **November 14, 2013 at 10:00 a.m.** to discuss the status of case progression and potential settlement. Counsel for plaintiff shall place the call.
- 4) The deadline for moving to amend pleadings or add parties is December 4, 2013.
- 5) The deadline for completing written discovery under Rules 33 through 36 of the Federal Rules of Civil Procedure is January 22, 2014. Motions to compel Rule 33 through 36 discovery must be filed by January 8, 2014.
- 6) The deadlines for identifying expert witnesses expected to testify at the trial are:

|                       |                 |
|-----------------------|-----------------|
| For the Plaintiff(s): | August 1, 2013  |
| For the Defendant:    | October 4, 2013 |
- 7) The deadlines for complete expert disclosures, (both retained experts, ([Fed. R. Civ. P. 26\(a\)\(2\)\(B\)](#)), and non-retained experts, ([Fed. R. Civ. P. 26\(a\)\(2\)\(C\)](#)), are:

|                       |                  |
|-----------------------|------------------|
| For the plaintiff(s): | August 1, 2013   |
| For the defendant(s): | October 4, 2013  |
| For rebuttal:         | November 4, 2013 |

- 8) The deposition deadline is February 4, 2014.
- 9) The deadline for filing motions to dismiss and motions for summary judgment is March 7, 2014.
- 10) The deadline for filing motions to exclude testimony on *Daubert* and related grounds is March 7, 2014.
- 11) Motions in limine shall be filed five business days prior to trial. It is not the normal practice to hold hearings on motions in limine or to rule on them in advance. Counsel should plan accordingly.
- 12) The parties shall comply with all other stipulations and agreements recited in their Rule 26(f) planning report that are not inconsistent with this order.

March 25, 2013.

BY THE COURT:

s/ Cheryl R. Zwart  
United States Magistrate Judge